

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 10/25/2018 4:01:14 PM
To: Allnutt, David [Allnutt.David@epa.gov]; Anderson, Kate [Anderson.Kate@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Berckes, Nicole [Berckes.Nicole@epa.gov]; Bernota, Carolyn [Bernota.Carolyn@epa.gov]; Bruce, Susan [Bruce.Susan@epa.gov]; Bufill, Lourdes [Bufill.Lourdes@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Cross, Verna [Cross.Verna@epa.gov]; King, Carol [King.Carol@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Dierker, Carl [Dierker.Carl@epa.gov]; Faeth, Lisa [Faeth.Lisa@epa.gov]; Frey, Bert [frey.bertram@epa.gov]; Garvey, Mark [Garvey.Mark@epa.gov]; Goerke, Ariadne [Goerke.Ariadne@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Harrison, Ben [Harrison.Ben@epa.gov]; Herrema, Jeffrey [Herrema.Jeffrey@epa.gov]; Kaplan, Robert [kaplan.robert@epa.gov]; Kausch, Jeannine [Kausch.Jeannine@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Matthews, Julie [Matthews.Juliane@epa.gov]; Morgan, Jeanette [Morgan.Jeanette@epa.gov]; Nanda, Sushila [Nanda.Sushila@epa.gov]; Nguyen, Quoc [Nguyen.Quoc@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; Rose, Cheryl [Rose.Cheryl@epa.gov]; Schaaf, Eric [Schaaf.Eric@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Stern, Allyn [Stern.Allyn@epa.gov]; Sullivan, Greg [Sullivan.Greg@epa.gov]; Swan, Russell [Swan.Russell@epa.gov]; Tierney, Cate [Tierney.Cate@epa.gov]; OGC PTSLO [OGC_PTSLO@epa.gov]; Abramson, Jennifer [Abramson.Jennifer@epa.gov]; Kaul, Monisha [Kaul.Monisha@epa.gov]; Vergeront, Julie [Vergeront.Julie@epa.gov]; Charlton, Tom [Charlton.Tom@epa.gov]; Smoot, Cameo [Smoot.Cameo@epa.gov]; Miles, James [miles.james@epa.gov]; Trivedi, Adrienne [Trivedi.Adrienne@epa.gov]; Presler, Amos [presler.amos@epa.gov]; OGC NFO FEAT [OGC_NFO_FEAT@epa.gov]; Cobb, Christina [cobb.christina@epa.gov]; Varco, Joseph [varco.joseph@epa.gov]; Pickell, Casey [pickell.casey@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Sims, Patricia [Sims.Patricia@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Mullings, Brandon [Mullings.Brandon@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Burke, Marcella [burke.marcella@epa.gov]; Mirza, Zainab [mirza.zainab@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Saenz, Diana [Saenz.Diana@epa.gov]; Stachowiak, Robert [Stachowiak.Robert@epa.gov]
Subject: Pesticides & Toxic Substances Law News for October 25, 2018



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Highlights

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TODAY'S NEWS

Boeing, Lockheed Seek Clarity on Chemicals Important for Flight

By Pat Rizzuto

The Boeing Co., Lockheed Martin Corp., and other aerospace firms using specialized chemicals critical to keeping airplanes aloft want EPA assurances they can continue to use them in a few years once the chemicals' environmental impacts are better understood.

Aramco Signals Chemical Ambitions Beyond \$70 Billion Sabic Deal

By Javier Blas

Saudi Aramco's chief executive officer said he has bigger ambitions in petrochemicals beyond the planned \$70 billion acquisition of a strategic stake in local company Sabic, touting plastics as a key hedge against an electric-car driven slowdown in global oil demand growth.

TUESDAY NIGHT WRAPUP

Fix Anti-Terror Chemical Program or Let It Expire: GOP Senators

By Sam Pearson

Congress should either let a federal chemical security program expire or pass legislation to make compliance easier, GOP senators said Oct. 23.

Trump Says He May Make Wheeler Permanent EPA Chief

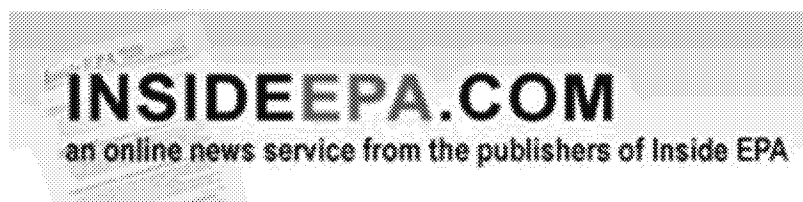
By David Schultz

President Donald Trump might be moving toward making Andrew Wheeler the permanent head of the EPA, the president indicated during off-the-cuff remarks at an Oct. 23 White House event.

Chemical Safety Board Narrowing Scope of Advice After Accidents (1)

By Sam Pearson

Investigators at a small federal agency that examine major industrial disasters are focusing on the most relevant safety recommendations—a change from past practice, an agency official said Oct. 23.



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Inside EPA's **Weekly Report**, 10/26/2018

TSCA Tracker

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Latest News

Trump EPA Official Expects Significant Rollback Of Obama-Era RMP Rule

A senior Trump administration official says EPA is planning a significant rollback of an Obama-era facility safety rule, arguing against significant disclosure of facility data that the original rule requires and backing the Labor Department's lead in process safety.

Daily Feed

Quote-Unquote: Trump on Wheeler, Wheeler on lead and more

Also: Wheeler urges oil industry to support E15 plan, but an argument in court seems likely.

AN E&E NEWS PUBLICATION

EPA

5 possible snags if Wheeler's nominated

Kevin Bogardus and Robin Bravender, E&E News reporters

Published: Wednesday, October 24, 2018



Acting EPA Administrator Andrew Wheeler could soon be nominated for the job by President Trump. Pictured: Wheeler signs a Superfund cleanup plan at a recent event with Sen. Roy Blunt (R-Mo.) and Rep. Ann Wagner (R-Mo.). @EPAAWheeler/Twitter

President Trump suggested yesterday he will nominate his acting EPA chief to keep the job.

In his remarks at the White House, Trump said acting Administrator Andrew Wheeler was "doing well" at the agency.

"He's acting, but he's doing well, right?" Trump said. "So maybe he won't be so acting so long" (*E&E News PM*, Oct. 23).

Wheeler, who took over from Scott Pruitt after the former administrator resigned in July under a crush of ethics allegations, has been welcomed by Republicans and EPA staff who believe he is an improvement over his predecessor, whom they had little interaction with.

If he is nominated, however, Wheeler's confirmation won't be easy. The battle to confirm him as EPA's deputy chief took more than six months and ended on a mostly party-line vote, with only three Democrats voting in support of Wheeler.

Environmental groups would again gear up for a fight over Wheeler and push their Democratic allies to oppose him. Soon after Trump's comments yesterday, the Sierra Club blasted out to reporters criticism of Wheeler, calling him a "public health threat."

"Wheeler has no business being confirmed to a full-time role at EPA, and any senator who supports him has made clear they are prioritizing polluter profits over the public," Michael Brune, the group's executive director, said in a statement.

If nominated for the top EPA job, Wheeler would likely have a much tougher confirmation hearing too. At his hearing for the deputy position, he appeared alongside Kathleen Hartnett White, Trump's failed nominee to lead the White House Council on Environmental Quality, who attracted more scrutiny from senators.

Still, as long as Republicans keep the Senate after the upcoming midterm elections, Wheeler is expected to be confirmed. Things could get more complicated if Democrats win the Senate, although that looks unlikely.

"He's done a remarkable job of calming the waters at EPA," said Matt Dempsey, who worked with Wheeler on the Senate Environment and Public Works Committee.

"I think he's gotten strong praise from members of both sides of the aisle to date," Dempsey added. "Any time you've got a nominee up before the U.S. Senate at this current time, it's going to be contentious, of course."

Democrats will push back on a Trump EPA nominee.

"They're going to drag him, through, they've all got to take their shots at him for their favorite stuff," said Stephen Brown, an energy consultant at RBJ Strategies and a former House Democratic staffer. "I don't see anything fatal. I see a long day of hearings for the guy."

Even if Democrats take the Senate, "Could he get through that? Of all the guys that they would put in there, I don't know who else they would rather deal with than Andy," Brown said.

Under the Vacancies Act, Wheeler can serve as acting EPA chief for 210 days, which would end in February next year, although some exceptions could extend his service at the top of the agency. If Wheeler is nominated for the administrator job, he could not serve in the position on an acting basis.

Here are some of the issues Wheeler's critics are likely to push during a potential confirmation hearing:

Lobbying past

Wheeler's opponents focused on his work as a lobbyist for energy interests during his confirmation fight to be EPA's second in command. His lobbying record would again be mined if he were nominated for the top job.

Wheeler's lobbying on behalf of coal giant Murray Energy Corp. was a frequent point of attack, something the acting administrator joked about during his first address to EPA employees. The company's CEO, Bob Murray, is considered close to Trump and was a vocal critic of EPA under the Obama administration.

Wheeler has sought to distance himself from his lobbying while at EPA, but records shown he has met with former clients. EPA officials have said those meetings were in line with his ethics commitments, given his past work for those specific clients was more than two years ago or those meetings were in group settings (*Greenwire*, Sept. 12).

Racist meme

Wheeler's use of social media has come under fire since he took over as acting chief and could be fodder at a confirmation hearing.

He has engaged with questionable posts on Twitter and Facebook, including "liking" a racist anti-Obama meme in 2013.

Wheeler has said he doesn't remember liking the post and he finds it offensive. Sen. Jeff Merkley (D-Ore.), who sits on the Environment and Public Works Committee that would oversee a Wheeler nomination for the top EPA job, has called for his resignation over the incident ([Greenwire](#), Oct. 11).

"If Andy is guilty of anything, he's always been rather prolific on social media," Brown said. "If anything, he should just take it down a couple of notches on social media while he's in the administration."

Ethanol problems

Pruitt ran into trouble with Republican lawmakers over biofuels, and those woes could burden Wheeler, as well.

Several farm-state Republicans sit on the EPW panel and last year held up the nomination of EPA air chief Bill Wehrum due to their concerns over Pruitt giving waivers to oil refiners from the renewable fuel standard. They became some of Pruitt's most prominent critics as his ethics problems mounted.

"Joni Ernst will have a real good shot at him on EPW on the E15 thing," Brown said. Ernst, an Iowa Republican, is a member of the EPW committee.

Wheeler said last week that he believes EPA can allow year-round sales of the 15 percent ethanol fuel, or E15, without congressional action. But that could put him in a bind with oil and gas companies.

"I hope that the oil industry will join us in helping to make the RFS program function better for the American public instead of taking it to court," Wheeler said ([Greenwire](#), Oct. 19).

Kids' health

Wheeler also has faced a number of questions over EPA's actions on children's health during his tenure so far.

Ruth Etzel, the head of the agency's children's health office, was placed on administrative leave last month. EPA has said that was because of allegations related to her management, but she contends the Trump administration moved her out over disagreements over the Federal Lead Strategy that was due in June but has yet to be released.

EPA press officials have pushed back hard, saying children's health and combating lead remain top priorities for the agency. Nevertheless, Democratic lawmakers have questioned Wheeler over his commitment on the issue.

Pruitt's baggage

Allegations of Pruitt's heavy spending and mismanagement still linger at EPA and could get another airing at a possible Wheeler confirmation hearing.

The EPA inspector general is continuing to review Pruitt's actions at EPA, including his travel and use of special hiring authority at the agency. Those reports are expected to be released this fall.

Wheeler, however, could create a contrast with Pruitt, considering his running of the agency has taken a different tack. He has shunned a 24/7 security detail and has opened up events to the press, taking questions from reporters. Wheeler even reopened a door to the hallway leading to the administrator's office, which was noticed by career employees.

"I think given their complaints against Pruitt versus the complaints against Wheeler, it's night and day," Dempsey said.

"Given his work so far and the respect he's earned from the folks I've talked to, I think he's got strong support if that's the decision that Trump makes."

Reporter Ariel Wittenberg contributed.

EPA

Unaware of gunshot scare, 'security guards were pissed'

Kevin Bogardus, E&E News reporter

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A reported gunshot at EPA's Washington, D.C., headquarters last year sparked a police investigation but turned out to be unfounded. @elysech/Twitter

Law enforcement officers from nearly a half-dozen federal and local agencies rushed to EPA headquarters when someone reported hearing gunshots in August last year.

But EPA's own security guards did not play much part in the response to the incident, which turned out to be a false alarm.

An "After Action Summary" of EPA's gunshot scare on Aug. 9, 2017, obtained by E&E News under the Freedom of Information Act, sheds new light on the incident, which led to police running into headquarters and agency employees hiding in their offices. Dated a week after the event and prepared by EPA's Office of the Administrator and the office's Facilities Management and Services Division, the report details where EPA needs to improve its response to emergency situations, including looping in its own building security.

"EPA HQ learned that [Federal Protective Service] did not contact the EPA Command Center, and the EPA Protective Security Officers (PSOs) were not actively engaged in responding to the incident," said the report. In addition, those security guards were not communicating during the emergency with officers from the EPA inspector general's office and EPA's criminal investigation division or with the facilities management team and employees in the building.

FPS has since set up an "internal process" to ensure it is notified whenever an emergency is reported in EPA headquarters, according to the report.

The Metropolitan Police Department of the District of Columbia, the Secret Service and the Federal Protective Service as well as EPA's IG and criminal investigation division officers responded to the report of gunshots being fired on the fifth floor of the William Jefferson Clinton North Building the afternoon of Aug. 9 last year. EPA's facilities management division

also dispatched personnel to the site and communicated with employees with emails and an "all clear" message on the public address system once police confirmed the incident was over.

An EPA employee, believing she heard gunshots, "acted appropriately" and called 911 from her cellphone and went into "hide" mode, according to the report. There was no gunshot; EPA managers suspect a large door slamming shut was mistaken for a gunshot ([Greenwire](#), Aug. 14, 2017).

"The law enforcement response went very well," said the report. "Law Enforcement Officers were onsite within 3 minutes of the 911 call, cleared the 5th floor, and also deployed to the floors above and below, securing the perimeter of the affected space."

The report also identified other "areas of improvement" after the gunshot scare.

"In the event of a real active shooter in the building, communications to the EPA staff/building occupants will be sent as soon as feasibly possibly [sic], even if the announcement does not contain all of the details of the event, as they may still be unknown upon initial notification," said the report. Those messages would be generated by the administrator's office and facilities management division and sent "via multiple mechanisms for communication," including the public address system, email and social media.

EPA employees have said communication was lacking during the scare, which has been acknowledged by senior officials in the agency.

"No one was satisfied with the time that it took for communications to get out," Donna Vizian, the principal deputy assistant administrator of the Office of Administration and Resources Management, said in an [internal email](#) in August last year.

One EPA employee remembered the turmoil of that day and the anger of the security guards.

"I remember that the security guards were pissed because they had no idea that anything was going on," said the employee. "There was total confusion initially because there were no announcements — just a huge contingent of armed police swarming the building."

Further, EPA has sought to improve communications between its command center and security officers, reminding the officers that they can call the command center if they see "suspicious or unusual activity," according to the report. Those officers have also been given more training to use panic buttons and new radios to help with responding to emergencies.

During the incident last August, "the PSOs were unaware of their desks were equipped with duress/panic buttons at each of their desks, they have now been trained and are prepared to use these buttons in the event of a building emergency," said the report.

"In addition, PSOs have been provided HQ 'push to talk' handheld radios at each desk. They have also been trained in using these phones, so they can communicate directly" with each other, emergency plan coordinators and the command center.

Another EPA employee said she found some aspects of the report upsetting.

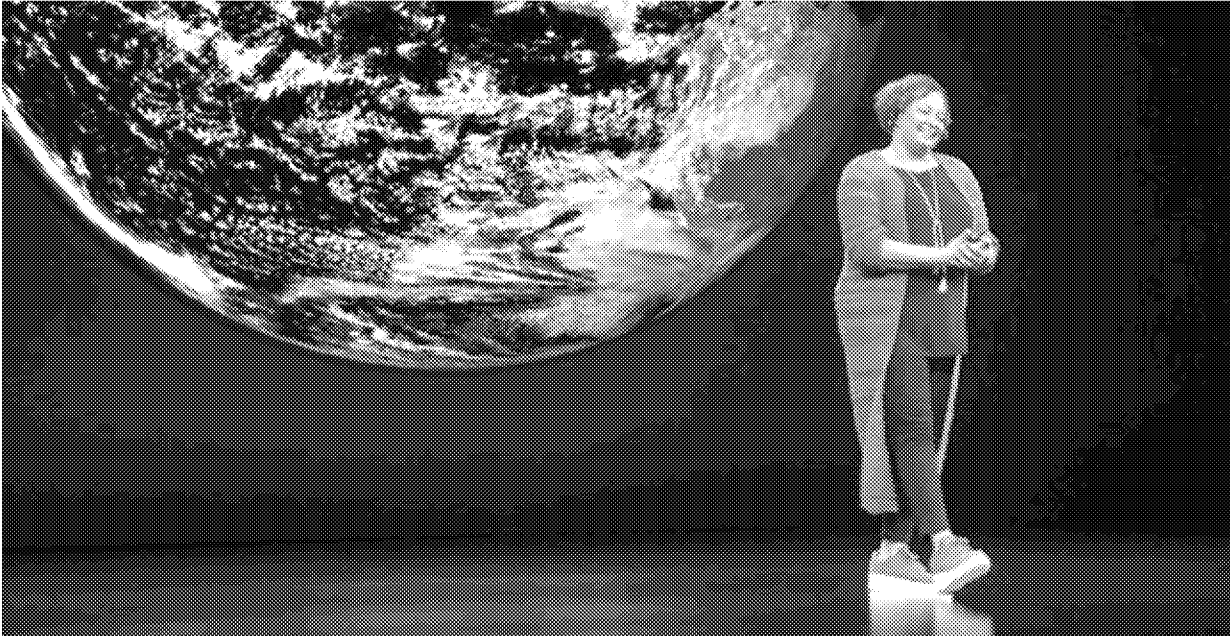
"What I find most disturbing is that those who were supposed to be assisting did not know about equipment they had or how to use some of it. Kind of defeats the purpose," said the employee.

"At least they are making an effort to improve the system, which is good for everyone."

EPA

Obama team assembles again to toast Lisa Jackson

[Robin Bravender](#), E&E News reporter



Former EPA Administrator Lisa Jackson received an environmental award last night. @lisapjackson/Twitter

Lisa Jackson's fan club had a reunion last night.

The Obama-era EPA administrator returned to Washington, where she was surrounded by her former team and celebrated for her work at the agency, even as some of her efforts are being rolled back by the Trump administration.

Trump EPA officials were at the swanky hotel dinner, too, where Jackson — now an executive at Apple Inc. — steered clear of criticizing the administration.

Jackson, who led EPA from 2009 until early 2013, was given an environmental achievement award by the nonpartisan Environmental Law Institute.

Her former staffers — some of whom have moved away from Washington — returned for the event. Former Attorney General Eric Holder introduced Jackson, touting regulations issued under her watch to curb greenhouse gas emissions from cars and trucks and limit mercury pollution from power plants.

The Trump EPA has moved to scale back the latest iteration of Obama-era greenhouse gas limits for cars and trucks, and the agency is attempting to redo the underlying justification for the power plant mercury rule.

Other EPA leaders have publicly criticized the Trump administration's rollbacks, but Jackson has been cautious in her public statements.

During a 25-minute interview last night, she discussed her career at EPA and at Apple, but didn't mention Trump EPA boss Scott Pruitt or now-acting EPA Administrator Andrew Wheeler.

Jackson did refer to President Trump once, when she was asked about Apple's commitment to help meet the goals set in the Paris climate accord, despite Trump's decision to withdraw.

"Apple has been clear that we remain committed to fighting climate change," she said.

Apple CEO Tim Cook "personally lobbied the president to stay in the Paris Agreement. That didn't work," she said. "We made it very clear that that's not going to stop us."

Jackson touted the power of the private sector to move supply chains and to advance environmental protection, and she heralded the "relentless optimism" among staffers at Apple, many of whom are millennials.

"They're not all millennials," she said. "I'm there."

Among the Obama EPA staffers at the ceremony were Bob Perciasepe, Jackson's former deputy administrator; Scott Fulton, ELI's president and a former EPA general counsel; Lisa Heinzerling, former policy chief at the agency; and Arvin Ganesan, who led EPA's congressional affairs shop and now works with Jackson at Apple. Members of her former press EPA team were also on hand, including Seth Oster, Allyn Brooks-LaSure, Adora Andy Jenkins, Brendan Gilfillan and Alisha Johnson.

Trump administration officials at last night's event included EPA General Counsel Matt Leopold, Deputy General Counsel Justin Schwab and the Council on Environmental Quality chief of staff Mary Neumayr.

It was the second time in the past week that Obama and Trump EPA officials have mingled at such events. Last week, some of the same EPA alumni gathered at headquarters for a formal unveiling of a portrait of Gina McCarthy, Jackson's successor at the agency.

NOMINATIONS

9th Circuit picks address injunctions, tribal issues

Ellen M. Gilmer, E&E News reporter

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Bridget Bade and Eric Miller, nominees for the 9th U.S. Circuit Court of Appeals, during their confirmation hearing today. Senate Judiciary Committee

Two senators spent 20 minutes today considering nominees for lifetime appointments to the 9th U.S. Circuit Court of Appeals.

In a rare recess hearing, the Senate Judiciary Committee heard from Bridget Bade and Eric Miller, the president's picks for open seats on the powerful West Coast court, which often hears environmental cases. Republican Sens. Mike Crapo of Idaho and Orrin Hatch of Utah were the only members in attendance.

Chairman Chuck Grassley (R-Iowa) last week rejected a request from committee Democrats to reschedule planned hearings for after the Senate's three-week break.

Crapo quickly gave Miller an opportunity to respond to mounting criticism from the American Indian community for his work on lawsuits negatively affecting tribes.

"What are your feelings about the sovereignty of tribes and the importance of honoring the treaties that our nation has with various tribes throughout the country?" Crapo asked, noting that he had heard concerns from tribal leaders in Idaho.

Miller explained that while he represented parties adverse to tribes in several cases as an appellate lawyer at Perkins Coie LLP, his role was simply to advocate for his clients. The law firm is the largest in Washington state, where Miller is based, and frequently handles issues involving tribes in the region.

He said he understands tribes are independent sovereigns with treaties that must be honored. "Those are fundamental principles that I agree with and would apply," Miller said.

Leading tribal advocacy groups including the Native American Rights Fund and the National Congress of American Indians oppose Miller's nomination, pointing to his involvement in cases limiting sovereign immunity for a tribe, extending certain taxation to tribal land and fighting a tribe's religious freedom arguments against a solar project ([Greenwire](#), Oct. 22).

Miller is a partner in the Seattle office of Perkins Coie and previously served as assistant to the solicitor general from 2007 to 2012.

His home-state senators, Democratic Sens. Patty Murray and Maria Cantwell, have not returned customary "blue slips" that signal satisfaction they were consulted.

Nationwide injunctions

Crapo asked Bade for her thoughts on the propriety of nationwide injunctions. The broad orders have been the subject of hot debate surrounding the Obama-era Waters of the U.S. rule and several marquee Trump administration policies.

Bade replied that Congress had been silent on nationwide injunctions but declined to discuss the issue further, noting that the Supreme Court hasn't yet answered the question of whether the orders are appropriate.

Bade is a magistrate judge for the U.S. District Court for the District of Arizona and previously worked in private practice and in the Department of Justice, where she served in the agency's Environmental Tort Litigation Section.

Hatch pledged his support for both Bade and Miller.

University of Richmond law professor Carl Tobias called the speedy confirmation hearing absurd and criticized Crapo for asking only "soft lobs to the net" and Hatch for asking no substantive questions.

"It is difficult to understand how the Senate can provide advice and consent in this situation," he said in an email. "The hearing should not have been held when the Senate has [been] in recess for several weeks to campaign and will not return until 11/13."

Committee members are expected to submit written questions during the next week.

The committee spent another 20 minutes this morning considering the nominations of Karin Immergut for the U.S. District Court for the District of Oregon and Richard Hertling for the U.S. Court of Federal Claims.

In another recess hearing last week, two senators questioned a nominee for the 4th U.S. Circuit Court of Appeals, and two more participated in the consideration of lower court picks ([Greenwire](#), Oct. 17).

PESTICIDES

Monsanto weedkiller ruling is 1st step in long legal battle

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With its stock dropping and more lawsuits expected, Monsanto Co. vowed yesterday to press on with a nationwide legal defense of its best-selling weedkiller Roundup after a San Francisco judge upheld a verdict alleging it causes cancer.

Legal experts said the decision will have little value in courtrooms across the country where similar cases are pending, but it will likely lead to more lawsuits. Similar lawsuits doubled from 4,000 to 8,000 after a San Francisco jury awarded groundskeeper DeWayne Johnson \$389 million in August.

Monsanto's lawyers said they will fight Johnson and every other lawsuit in the country alleging that the active ingredient in the world's most popular herbicide — glyphosate — causes cancer. Johnson's lawsuit was the first lawsuit to go to trial, and several more appear ready to start early next year.

Judge Suzanne Bolanos cut the jury's award for Johnson to \$78 million on Monday but upheld its verdict against St. Louis-based Monsanto (*Greenwire*, Oct. 23).

She reduced punitive damages from \$250 million to \$39 million in a brief decision that stood in sharp contrast to an earlier tentative ruling saying she doubted Johnson should receive any such award.

Bolanos previously said Johnson's attorneys failed to show Monsanto executives acted with malice, which is required for punitive damages. She didn't explain her change of mind. Several jurors wrote to the judge asking her to respect their verdict, but legal experts said that should not have influenced the judge.

Monsanto's lawyer said it would appeal the decision if Johnson accepts the award rather than asking for a new trial. He has until Dec. 7 to decide.

Monsanto argues that numerous scientific studies and EPA have found glyphosate to be safe.

"Because of this, we will continue to vigorously defend our glyphosate-based products," company spokesman Daniel Childs said.

Johnson's attorney argued that the World Health Organization in 2015 concluded otherwise.

Legal experts say the San Francisco decision will have no immediate legal effect on the other lawsuits, especially since they predict months — if not years — of appeals.

A San Francisco trial court decision is also not binding in any other court. California appeals court decisions are binding in California courts but not on state court actions elsewhere.

"It's just one early piece in a large, legal puzzle," said University of California, Hastings law professor David Levine. — *Paul Elias, Associated Press*

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